

B. Motions to Supplement And amend index

On November 27, 2001, the Board received Lakewood’s “Respondent City of Lakewood’s Index of the Record” (**Index**).

On December 13, 2001, the Board received a letter from Lakewood’s representative indicating that the City had agreed to amend the Index to include two items requested by LIHI.

On January 8, 2002, the Board received Lakewood’s “Respondent City of Lakewood’s Amended Index of the Record” (**Amended Index**).

Petitioners’ Prehearing Brief included two requests for the Board to take official notice of two different tables incorporated into the text of Petitioners’ opening brief. Respondent Lakewood objected to these requests. The Board addressed these motions at the Hearing on the Merits, the Board’s ruling on these issues is noted under Section III B of this Order – Preliminary Matters.

C. Dispositive and other Motions

The Board did not receive any dispositive motions within the timeframe established in the PHO.

On December 11, 2001, the Board received LIHI’s “Motion to Consolidate or Delay Case.”

On December 18, 2001, the Board received: “Respondent City of Lakewood’s Response to Motion to Consolidate or Delay Case.”

On December 21, 2001, the Board issued its “Order Denying Motion to Consolidate or Delay.” LIHI had requested that the Board consolidate its proceedings for a Superior Court Remand in the *LIHI I* ^[1] case and the proceedings in this matter – *LIHI II*. The Board addressed the remand and on February 21, 2002, issued its “Order on Superior Court Remand [No. 01-2-000608-5] in *LIHI I*, CPSGMHB Case No. 00-3-0017” (**2/21/02 Remand Order**). *See*: the 2/21/02 Remand Order for a supplemental procedural history.

D. Briefing and Hearing on the Merits

On January 30, 2002, the Board received “Petitioner’s Prehearing Brief,” with 24 attached exhibits” (**LIHI PHB**).

On February 27, 2002, the Board received “City of Lakewood’s Hearing Brief,” with 44 attached

exhibits” (**Lakewood Response**).

On March 6, 2002, the Board received “Petitioner’s Reply Brief” (**LIHI Reply**).

On March 11, 2002, the Board held a hearing on the merits in Suite 1022 of the Financial Center, 1215 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, Lois H. North and Joseph W. Tovar were present for the Board. Michael Mirra and John Purbaugh represented Petitioners. Susan E. Drummond and J. Tayloe Washburn represented Respondent City of Lakewood. Brenda Steinman of Mills & Lessard, Inc provided Court reporting services. Gary Watkins, legal intern to the Board and Debra Johnson from the City of Lakewood, also attended the hearing. The hearing convened at approximately 10:00 a.m. and adjourned at approximately 12:15 p.m. A transcript of the hearing was ordered.

On March 13, 2002 the Board received the transcript (**HOM Transcript**).

II. presumption of validity, burden of proof and standard of review

Petitioner challenges provisions of Lakewood’s recently adopted LUDC. Pursuant to RCW 36.70A.320(1), Lakewood’s action is presumed valid upon adoption.

The burden is on Petitioner, LIHI, to demonstrate that the adoption of the LUDC is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [Lakewood] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find Lakewood’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to Lakewood in how it plans for growth, consistent with the goals and requirements of the GMA. However, as our State Supreme Court has stated, “Local discretion is bounded, however, by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561 (2000). Further, Division II of the Court of Appeals has stated, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county’s plan that is not ‘consistent with the requirements and goals of the GMA.’” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429 (2001).

iii. board jurisdiction, preliminary matters and Prefatory note

A. Board Jurisdiction

The Board finds that the LIHI's PFR was timely filed, pursuant to RCW 36.70A.290(2); LIHI has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which adopts the development regulations [LUDC] intended to implement Lakewood's Plan, pursuant to RCW 36.70A.280(1)(a).

B. preliminary matters

LIHI asks the Board to take official notice of two Tables incorporated into its brief. LIHI PHB, at 6, fn. 6 and at 8, fn. 8. The first Table is entitled "Monthly Income and Rent Levels Pierce County, Washington 2001" and the second is labeled "Homeless Persons and Families in Pierce County, Washington FY 1999, FY 2001." Lakewood objected, arguing: 1) the request is untimely; 2) Lakewood never received copies of the proposed exhibits; 3) the data included is Pierce County data, not City of Lakewood data and is therefore irrelevant; and 4) the data does not fall within the parameters of official notice that the Board can notice. Lakewood PHB, at 45-46. In reply, LIHI argued that Lakewood does not dispute the facts contained in the tables in question. LIHI Reply, at 7.

The Board entertained argument at the HOM and pursuant to WAC 242-02-670, **granted** the request to take official notice. However, the Board indicated the exhibits would be accorded the weight they merit in the Board's deliberations and their relevance determined based on the issues at hand. The summary table below assigns exhibit numbers to the two exhibits.

Proposed Exhibit: Documents	Exhibit No.
1. Monthly Income and Rent Levels Pierce County Washington 2001	Board takes notice - HOM – 1
2. Homeless Persons and Families in Pierce County, Washington FY 1999, FY 2001	Board takes notice - HOM – 2

C. Prefatory Note

This is the second challenge brought by LIHI contesting Lakewood's efforts to comply with the goals and requirements of the GMA. The first action questioned Lakewood's Comprehensive Plan provisions, especially as they related to housing and the designation of a portion of the Springbrook and American Lake Gardens (ALG) neighborhoods as industrial. The Board FDO

in *LIHI I* upheld Lakewood’s Plan designation and Policy provisions. The Board further clarified its reasoning for upholding the Plan in its 2/21/02 Remand Order. In the present action, LIHI takes issue with the LUDC, specifically the Housing Incentives Program (**HIP**), which Lakewood adopted, in part, to implement its plan.

In short, the City’s HIP program, codified at 18A.50.700 Lakewood Municipal Code (**LMC**)^[2] is a voluntary program that provides incentives for housing developers to provide rental housing for low income, elderly and disabled persons. The available incentives include: density bonuses ranging from 10% to 25% (the bonus varies depending upon the zone), development standard modifications (lot coverage, parking requirements and building height), and fee reductions ranging from 10% to 50% (the discount varies depending upon the density bonus). The program is enforced through the use of covenants and permit conditions.^[3]

There are two issues in this case that the Board must decide. The arguments proffered by both LIHI and Lakewood overlap and are intertwined involving both these issues. Consequently, the arguments and positions of the parties are summarized once before the Board discusses each of the Legal Issues. The Board will first address Legal Issue 2 (Housing Goal challenge), then address Legal Issue 1 (Plan implementation challenge).

iv. legal issues and discussion

Position of the parties on Legal Issues 1 and 2:

LIHI argues that its review of the City’s LUDC indicates, to LIHI, that the regulations fail to implement the Plan. LIHI focuses its challenge on the HIP, which it contends is “[Lakewood’s] mechanism for developing affordable housing.” While LIHI acknowledges such programs “show promise,” they take issue with the “conservative approach” Lakewood has adopted in designing its HIP. LIHI PHB, at 19. LIHI then sets forth five reasons why it believes the HIP does not implement the Plan. First, LIHI notes that the HIP is voluntary; second, it is limited to the rental market; third, it will not reach Lakewood’s poorest families; fourth, it is limited to 20 years; and finally, the HIP lacks an enforcement mechanism. LIHI PHB, at 19-20.

LIHI cites to the Office of Community Development’s guidelines, WAC 365-195-070(6) and – 370(g), to support its contention that the GMA requires the City’s development regulations to target the documented needs of the lowest economic groups. LIHI PHB, at 24-26. LIHI argues that Lakewood’s own data illustrates that over three quarters of the low-income people in Lakewood who need affordable housing earn less than 50% of the median income and would not be reached by the HIP program. LIHI PHB, at 27. LIHI also contends that while the HIP program applies to low-income people it also applies to elderly and disabled persons; additionally

LIHI asserts the HIP ignores the vast majority of its low-income citizens with affordable housing needs (those at or below 30% and 50% of median income) by subsuming them into a single category of “low-income” persons (those at or below 80% of median income). Since the incentive levels are the same for each group, developers would rent to those qualified at the market-rate end of the spectrum (i.e. seniors, disabled or those at 80% of median income), not those at the lowest income levels (i.e. those at 50% or 30% of median income). Therefore, LIHI argues, these economic segments will experience little, if any, benefit from the HIP. LIHI PHB, 28-33; and HOM Transcript, at 20-25. Finally, LIHI asserts that the HIP does not encourage the availability of affordable housing to the poorest segments of the population, and therefore fails to comply with the substantive requirements of Goal 4. LIHI PHB, at 38.

In response Lakewood emphasizes its five-part strategy^[4] to indicate that it is implementing its Plan. Additionally, Lakewood points to its efforts to obtain grant funding to support affordable housing. Lakewood PHB, at 1-3 and 4-7. Lakewood notes that LIHI only challenges *one* implementation approach the City has initiated – the HIP, but ignores other implementation efforts. The City also indicates that rezoning that portion of the two neighborhoods to industrial, on its zoning map was necessary to maintain consistency and implement the Plan designations of those same areas as industrial. The City argues that the HIP directly implements Plan Policies LU-6.6, LU-7.5 and LU-7.23, policies that LIHI never challenged.^[5] Further, Lakewood argues that the HIP program is not dictated by the GMA, and to implement its Plan policies Lakewood chose to adopt and design its HIP program. Additionally, there are no requirements for a HIP; it is not required to target just low-income persons; its design is left to the discretion of the City and in designing the HIP; the City need not adhere to all the features LIHI would like to see included. Lakewood PHB, at 13-19.

Lakewood also argues that there is no requirement that the HIP program be exclusively designed for low-income tenants or have different incentives for different low-income groups. The City also argues that its choice of grouping low-income categories together and including elderly and disabled persons within its coverage does not violate the Act and also implements its Plan. The City contends the HIP is the first program of its kind in the City and its design fosters streamlined permit processing. The City does note that with monitoring, it may eventually choose to amend the HIP if it is not working as intended. Lakewood PHB, at 19-24. The City also cites to a report on Affordable Housing in King County, provided by LIHI, that states, “Local government cannot control housing costs – supply and demand, financing costs, household incomes and other market factors will have the greatest effect on affordability [of housing].” Lakewood PHB, at 23 (*Citing*, Ex. 144.) The City’s brief then details the actions it is taking to implement its five-part strategy. Lakewood explains that its efforts to encourage affordable housing include: 1) high density development, 2) multifamily housing, 3) home ownership and maintenance programs, 4) senior housing overlay, 5) accessory dwelling units in all residential zones, 6) liberal treatment of non-

conforming uses, 7) mobile home provisions, 8) caretaker units, 9) redevelopment/urban renewal program, 10) community development block grant funding, 11) joint programs with the Pierce County Housing Authority, and 12) programs to improve safety, such as: Weed and Seed, Walkable Communities, and Safe Haven. Lakewood PHB, at 26-45, and HOM Transcript, at 52-53, and 58-61.

In reply, LIHI again argues that the City's FEIS and DNS support LIHI's claims that the City is not making adequate provision for affordable housing, and that the City's economic development efforts are inadequate to address the GMA's direction to meet affordable housing needs. LIHI Reply, at 1-4. LIHI also argues that the City does not dispute that the HIP does not mandate that a developer must offer any housing affordable to low-income persons.

A. Legal Issue No. 2

The Board's PHO set forth Legal Issue No. 2

2. *Did the City of Lakewood (City) fail to be guided by and comply with RCW 36.70A.020 (4) [Goal 4] when it adopted its development regulations, particularly the Housing Incentive Program (HIP), ^[6] because the HIP fails to “encourage the availability of affordable housing to all economic segments of the population”?*

Applicable Law

RCW 36.70A.020 provides in relevant part:

The following goals . . . shall be used exclusively for the purpose of guiding development of comprehensive plans and development regulations:

...

- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock.

(Emphasis supplied.) The GMA is clear; development regulations must be guided by, and comply with, the goals of the Act, including the Housing Goal [Goal 4].

Discussion

The Housing Goal contains three separate, but equal subparts: 1) encouraging the availability of affordable housing to all segments of the population of this state, 2) promoting a variety of

residential densities and housing types, and 3) encouraging the preservation of existing neighborhoods. LIHI's challenge is limited to the first subset of this Goal – encourage the availability of affordable housing to all economic segments of the population of this state. The Board has previously determined that Lakewood's Plan was guided by this goal. *See: LIHI I*, at 10-13. The Board now turns to the question of whether the development regulations, specifically the HIP, are guided by Goal 4.

In a prior case, the Board stated:

The Act requires cities and counties to preserve existing housing while promoting affordable housing and a variety of residential densities and housing types. No jurisdiction is required to reconcile these seemingly inconsistent requirements by totally focusing on one requirement, for instance preserving existing housing, to the exclusion of the other requirements, such as encouraging more affordable housing. Instead jurisdictions must reconcile the Act's seemingly contradictory requirements by applying and necessarily balancing them.

West Seattle Defense Fund v. City of Seattle (WSDF I), CPSGMHB Case No. 94-3-0016, Final Decision and Order, (Apr. 4, 1995), at 30.

The Board notes with approval that the City of Lakewood's LUDC and zoning map promotes a variety of residential densities and housing types and does, even for American Lake Gardens and Springbrook, encourage the preservation of existing housing stock in the City. The Board also acknowledges that the City is pursuing several non-regulatory approaches to reach all economic segments of the population. However, LIHI has targeted its challenge to Lakewood's HIP, and questions whether "the City's HIP program encourages the availability of affordable housing to all economic segments of the population?"

After a cursory review, it might appear reasonable for the Board to forego a detailed scrutiny of the HIP, and find that the City's efforts have been guided by Goal 4; particularly in view of the considerable and commendable efforts Lakewood has undertaken to address affordable housing with the full gamut of its regulatory and non-regulatory programs. The Board's prior decision in *WSDF I* arguably supports this outcome. However, upon consideration of not only the present action, but the City's prior action of designating substantial portions of ALG and Springbrook for "industrial use," the Board is compelled to look more closely at the HIP and measure it for fidelity of Goal 4. To some extent, Lakewood has "opened the door" to this review by virtue of the "strong medicine"^[7] it prescribed for the ALG and Springbrook neighborhoods. Thus, the City's own actions, and its mapping and documentation of the "economic segments of [its] population," coupled with LIHI's arguments, that obliges the Board to review whether the HIP, specifically, is guided by and complies with Goal 4.

Lakewood's concern and attention to its poorest neighborhoods is documented and illustrated by the following:

- First, Lakewood's Plan devotes a separate section of its land use element to Isolated Areas, which specifically address the isolated neighborhoods of ALG, Springbrook and Tillicum. There are specific land use policies that address the plight of the "poorest areas of the City." Finding of Fact (FoF) 5.
- Second, the Plan's Future Land Use Map (FLUM), designates a portion of two of these neighborhoods (ALG and Springbrook) as Industrial and the zoning map implements these plan designations by zoning the designated areas as Industrial Business Park and Industrial I. FoF 6.
- Third, the City's five-part strategy acknowledges the poverty in these neighborhoods. FoF 7.
- Fourth, the 1990 Census tract data indicates that 76% of the people living in Springbrook and 79% of the people living in ALG and Tillicum have incomes below 80% of the 1990 Area Median Income (*i.e.* \$28,100). FoF 8.
- Fifth, LIHI demonstrates that over three quarters of the poor people who need affordable housing living in Lakewood earn less than 50% of the AMI and another 20% earn 80% or less. Lakewood does not dispute these figures. FoF 9.
- Sixth, the City's adoption of the HIP is intended to implement some of the housing provisions of Lakewood's Plan. FoF 10.

Consequently, the Board concludes that it is appropriate to review the HIP, as one of the City's key implementation tools, for compliance with Goal 4 as it relates to encouraging affordable housing for all economic segments of the population. The question for the Board is "Does the HIP encourage affordable housing for all economic segments (including all low-income residents) of Lakewood's population?"

LIHI argues that while the HIP is intended to serve the affordable housing needs of low-income people it also applies to elderly and disabled persons without income constraints. LIHI notes that whether the low-income constraints apply to seniors and disabled is ambiguous in the HIP. LIHI does not take issue with a program that can provide special needs housing, but asserts that the HIP ignores those residents at or below 30% and 50% of median income by subsuming them into a single category of "low-income" persons (those at or below 80% of median income) and including that group in with seniors and disabled. Since the incentive levels are the same for each group, housing developers would logically rent to those qualified at the market-rate end of the spectrum (*i.e.* seniors, disabled or those at 80% of median income), not those at the lowest income levels (*i.e.* those at 50% or 30% of median income). Thus, LIHI contends, the lowest economic segments of Lakewood will experience little, if any, benefit from the HIP. Therefore,

LIHI concludes, the HIP does not comply with Goal 4. LIHI PHB, 28-33; and HOM Transcript, at 20-25. The Board agrees.

The stated purpose of the HIP is:

The City is responsible for establishing regulations that will result in housing opportunities for all of its residents, *no matter what their economic means*, age or level of ability. To that end, the City's comprehensive plan contains policies designed to encourage affordable housing and special needs housing. Not only are a number of regulatory tools available to help stimulate the development of the desired housing in the city, but *some of these tools offer additional benefit to the city as a whole in dispersing "qualified" housing, such as low-income units throughout the city so as to avoid perpetuating existing concentrations of poverty*. The provisions contained herein would allow a project proponent to receive more return from a project in terms of additional density, relaxed development standards, and discounted review fees in return for helping meet public goals.

LMC 18A.50.710 (emphasis supplied). By its own terms, avoiding concentrated pockets of poverty while addressing affordable housing for low-income persons is clearly what the HIP is intended to address. Does the HIP serve these purposes?

The HIP defines low-income as 80% or less of the AMI. LMC 18A.50.790(A). LIHI is correct, the HIP does not distinguish those at or below 50% AMI (very low-income^[8]) or those at or below 30% AMI (extremely low-income^[9]) persons. As LIHI demonstrates, over three quarters of the poor people who need affordable housing in Lakewood earn less than 50% of median income. FoF 9. ALG, Springbrook and Tillicum contain some of the highest concentrations of poverty in the City. While those with the greatest need fall within the City's low-income definition, the bar is high enough to dilute the potential impact of the HIP program in providing affordable housing to the poorest of Lakewood's poor that are concentrated in its poorest neighborhoods.

Further, the Board agrees with LIHI that the HIP is ambiguous and unclear as to whether seniors or disabled persons must also be low-income to benefit from the program and whether non low-income units can qualify for the density bonuses. The HIP defines "qualified unit" as:

Qualified Unit. Residential housing for rental occupancy, which, as long as the same is occupied by a low-income, as defined herein, household, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty (30) percent of the residents' income(s).

LMC 18A.50.790(B). This definition seems to suggest that the HIP requires occupancy of a “qualified” unit by a low-income tenant. However, the HIP’s provisions for density bonuses states:

Rate and calculation. In return for the inclusion of a number of on-site units dedicated to serving low-income persons, *and/or* “market-rate” elderly *and/or* disabled persons, *one (1) additional, on-site “market-rate” unit is permitted as a bonus for each qualified unit. . .*

LMC 18A.50.740 (emphasis and quotations supplied). This language seems to suggest that housing units to serve *non low-income* senior or *non low-income* disabled persons are eligible for the density bonus provisions of the HIP. If this is the case, it further dilutes the potential effectiveness of the HIP in providing affordable housing to low-income persons. It is also not clear whether the fee reductions are *only* available for units dedicated to low-income tenants. (See: LMC 18A.50.760 in Appendix A). Based upon these ambiguities of the HIP, the Board concludes that the HIP does not encourage the provision of affordable housing for all economic segments of Lakewood’s population.

The young City of Lakewood is commended for its GMA planning and implementation efforts. It has accomplished much since incorporation. Likewise, the City’s decision to undertake a housing incentives program is commendable. A HIP is certainly an appropriate implementation mechanism to encourage the development of affordable housing, especially for *all* segments of the low-income population.

However, the ambiguities and present design of the City’s HIP leads the Board to conclude that it is unclear whether implementation of the HIP will reach *any* of Lakewood’s low-income population, let alone, the poorest of the poor, which, in Lakewood’s case, are a distinct economic segment of the population. Consequently, the Board finds the City’s action was **clearly erroneous** and will **remand** the HIP program to the City with direction to revise the HIP to remove ambiguities and otherwise modify it so the HIP incentives will have the effect intended in its purpose statement and also comply with Goal 4 of the GMA.

Conclusion

The City’s action of adopting the HIP with its present ambiguities and design was **clearly erroneous**. The ambiguities and present design of the City’s HIP (LMC 18A.50.700-790) lead the Board to conclude that the HIP is **not guided by, and does not comply with**, the direction of RCW 36.70A.020(4). The HIP does not encourage the availability of affordable housing to *all economic segments* of Lakewood’s population. The Board will **remand** the HIP to the City to

revise the HIP, or take other appropriate legislative action to comply with the goals and requirements of the Act.

B. Legal Issue No. 1

The Board's PHO set forth Legal Issue No. 1

1. *Did the City fail to comply with the requirement of RCW 36.70A.040(3) that its development regulations, including the HIP, be consistent with and adequately implement provisions of its Comprehensive Plan that purport to: (1) ensure the vitality and character of existing residential neighborhoods; (2) make adequate provision for affordable housing for all economic segments of the community; and (3) meet the City's projected demand for affordable housing as required by Pierce County's CPP on affordable housing?*

Applicable Law

RCW 36.70A.040(3) provides in relevant part:

Any county or city that is initially required to conform with all the requirements of this chapter . . . shall take actions under this chapter as follows:

...

(d) . . . each city located within the county *shall adopt* a comprehensive plan under this chapter and *development regulations that are consistent with and implement the comprehensive plan* . . .

(Emphasis supplied.)

Discussion

The Board acknowledges that along with its LUDC, the City adopted a Zoning Map that reflects an Industrial Business Park and Industrial-I zoning designation for portions of the Springbrook and ALG neighborhoods. LIHI does not contest these designations. ^[10] These zoning map designations implement the Industrial land use designation indicated on the City's FLUM. **The Board finds that these zoning designations on the Zoning Map are consistent with and implement the City's Plan FLUM designations and comply with RCW 36.70A.040(3).**

It is apparent from the record and briefing that LIHI would have designed the HIP differently from what the City did. Perhaps LIHI's ideal program would: be mandatory, be applied to owners and renters, be of longer duration and have different enforcement provisions. These features of the HIP are policy choices, and such choices are within a local government's

discretion, not the Board's. The Board's role is not to judge the wisdom or advisability of every detail of a program such as the HIP – rather it is the Board's role to review the policy choices, as set forth in the HIP, for compliance with RCW 36.70A.040(3).

At the HOM, LIHI noted Lakewood Plan Policy LU-7.23 to illustrate that the HIP is not implementing the City's Plan. Lakewood countered that the HIP was only one of the actions the City had taken to implement its Plan; [\[11\]](#) and that, in fact, the HIP is intended to implement Plan Policies LU-6.6, LU-7.5, as well as LU-7.23. These three Plan Policies provide:

LU-6.6 Where appropriate, provide *density bonuses* and *modified height restrictions* to encourage the development of *senior and disabled housing*.

LU-7.5 Provide *density bonuses* and *modified height restrictions* to encourage the development of affordable housing projects.

LU-7.23 Provide *incentives* for developers to increase the supply of affordable housing through mechanisms such as *density bonuses* and *fee waivers*.

City of Lakewood Comprehensive Plan, Ex. 140, at 3-5 and 3-8 (emphasis supplied).

Review of the HIP [*See*: Appendix A] reveals that it includes provisions for density bonuses (18A.50.740 LMC), modified lot coverage, parking and height restrictions, (18A.50.750 LMC) and fee waiver or discount provisions (18A.50.760 LMC). Each of these provisions is an incentive for housing developers to provide the desired affordable housing. On its face, the HIP contains provisions that mirror the density bonus, modified restrictions and fee waiver aspects of the noted Plan Policies. However, simply parroting the language of the Plan does not mean the HIP program, as designed will work. As the Board concluded in Legal Issue 2, there are ambiguities in the present design that cause it not to comply with Goal 4. Likewise these same ambiguities lead the Board to conclude that the HIP program does not implement Lakewood's Plan. Recall that the stated purpose of the HIP is:

The City is responsible for establishing regulations that will result in housing opportunities for all of its residents, no matter what their economic means, age or level of ability. To that end, the City's comprehensive plan contains policies designed to encourage affordable housing and special needs housing.

LMC 18A.50.710. Developing programs that will provide affordable housing opportunities and special needs housing opportunities for the low-income, very low-income, extremely low-income, and disabled and senior citizens of Lakewood is, as the City acknowledges, its responsibility. The HIP program, though well intentioned, with its ambiguities and omissions,

does not carry out this responsibility. Consequently, the **Board concludes that the HIP is inconsistent with and does not implement Lakewood's Plan and does not comply with the requirements of RCW 36.70A.040(3).**

The Board recognizes that the HIP is one of the many tools the City has undertaken to attack its low-income and special needs housing needs. The Board also acknowledges that the HIP alone will not conquer poverty in Lakewood nor necessarily ensure that affordable housing is provided for all of Lakewood's residents. However, with revisions, coupled with conscientious monitoring and administration, the HIP can be an effective tool and make contributions to addressing the needs Lakewood has identified in its Plan.

Conclusion

The Board concludes that Lakewood's zoning designations on the Zoning Map are consistent with and implement the City's Plan FLUM designations and **comply** with the requirements of RCW 36.70A.040(3). However, the City's Housing Incentive Program is inconsistent with and does not implement Lakewood's Plan. Consequently, the City's HIP **does not comply** with the consistency and implementation requirements of RCW 36.70A.040(3). The Board will remand the HIP with direction to Lakewood to bring the HIP into compliance with the requirements of the GMA by implementing its Plan.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

- The Board finds that the City of Lakewood's adoption of its LUDC, specifically the Housing Incentive Program (LMC 18A.50.700-790) was **clearly erroneous** due to its ambiguities and design as applied to low-income residents.
- The Board concludes that the City of Lakewood's Housing Incentive Program is **not guided by**, and **does not comply** with the direction provided by RCW 36.70A.020(4) to encourage the availability of affordable housing to *all economic segments* of the population.
- The Board **remands** the City of Lakewood's Housing Incentive Program with direction to the City to take appropriate legislative action to achieve compliance with the Act. This may be accomplished by revising the Housing Incentive Program to remove ambiguities and otherwise modify the HIP so the housing incentives will have the effect intended in its purpose statement and implement the Plan, thereby complying with the GMA as set forth in this Final Decision and Order. Lakewood shall take such corrective legislative action by no later than **September 6, 2002**.

- By no later than **4:00 p.m. September 13, 2002**, the City shall file with the Board an original and four copies of a Statement of Actions Taken to Comply (**SATC**), with copies of adopted legislation attached. The SATC shall describe how the adopted legislative action achieves compliance with the GMA. A copy of the SATC shall simultaneously be served upon Petitioners.
- By no later than **4:00 p.m. September 30, 2002**, the Petitioners may file with the Board an original and four copies of a Response to the SATC. A copy of such response shall simultaneously be served upon the City.
- By no later than **4:00 p.m. October 4, 2002**, the City may file with the Board an original and four copies of a Reply to Petitioners' Response. A copy of such reply shall simultaneously be served upon Petitioners.
- Pursuant to RCW 36.70A.330(1), the Board gives **Notice of Compliance Hearing** in this matter to be held at **10:00 a.m. on October 7, 2002** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. If the City takes legislative action to comply with the Act prior to the deadlines established in this FDO, and the parties stipulate and agree, the Board will adjust this compliance schedule and, if desired and appropriate, arrange to conduct the compliance hearing telephonically.

So ORDERED this 15th day of April 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a

motion for reconsideration pursuant to WAC 242-02-832.

Appendix A

Section 18A.50.700 LMC is Lakewood's **Housing Incentive Program**, it provides as follows:

18A.50.710 Purpose.

The City is responsible for establishing regulations that will result in housing opportunities for all of its residents, no matter what their economic means, age or level of ability. To that end, the City's comprehensive plan contains policies designed to encourage affordable housing and special needs housing. Not only are a number of regulatory tools available to help stimulate the development of desired housing in the city, but some of these tools offer an additional benefit to the city as a whole in dispersing "qualified" housing such as low-income units throughout the city so as to avoid perpetuating existing concentrations of poverty. The provisions contained herein would allow a project proponent to receive more return from a project in terms of additional density, relaxed development standards, and discounted review fees in return for helping meet public goals.

18A.50.720 Applicability.

This section applies, at the developer's option, to land-use applications for rental housing in all zones, except the construction of a single-family dwelling on one (1) lot that can accommodate only one (1) dwelling based upon the underlying zoning designation. This section shall not apply to congregate and group living facilities.

18A.50.730 General Provisions.

All housing developed under these standards shall meet all applicable federal, local and state guidelines and requirements for limiting occupancy to identified qualified groups.

18A.50.740 Inclusionary Density Bonuses.

A. Rate and calculation. In return for the inclusion of a number of on-site units dedicated to serving low-income persons, and/or market-rate elderly and/or disabled persons, one (1) additional, on-site market-rate unit is permitted as a bonus for each qualified unit provided, up to a maximum percentage above the maximum density permitted in the underlying zoning district as shown below; provided, that only one (1) bonus unit may be awarded per qualified unit no matter how many qualifying categories it serves.

Zoning District	Maximum % Additional Density
R1, R2, R3, R4	10

MR1, MR2, ARC, NCI, NC2	15
MF1, MF2, MF3	20
CBD, TOC	25

B. **Duration.** Prior to the final approval of any land-use application for which density bonuses are being sought, the owner of the affected parcels shall deliver to the City a duly executed covenant running with the land, in a form approved by the City Attorney, requiring that the qualified dwellings created pursuant to this section remain as such for a period of at least twenty (20) years from the commencement date. The owner/applicant shall be responsible for the cost of preparing and recording the covenant, and the owner/applicant or subsequent owner or operator shall be responsible for administering the covenant. The commencement date shall be the date that the first lease agreement with a renter within an applicable qualification group becomes effective.

C. **Siting of Units.** The qualified units constructed under these provisions shall be integrated and dispersed within the development for which the density bonus is granted. The physical segregation of qualified housing units from unqualified market-rate housing units, or the congregation of qualified housing units into a single physical portion of the development, is prohibited.

D. **Size of Units.** The size of the qualified units constructed under the provisions of this chapter shall be proportionate to the size of the units contained in the entire project, i.e., if fifty (50) percent of the units in the project are one-bedroom units and fifty (50) percent are two-bedroom units, then the qualified units shall be divided equally between one- and two-bedroom units.

E. **Appearance of Units.** Qualified units shall possess the same style and architectural character and shall utilize the same building materials as market-rate units.

F. **Completion.** If a project is to be phased, the proportion of qualified units to be completed with each phase shall be determined as part of the phasing plan approved by the Community Development Director.

18A.50.750 Development Standard Modifications.

In order to accommodate bonus-housing units awarded under this program, the development standards set forth separately in this code may be modified as follows for properties containing qualified housing units:

A. **Lot Coverage.** Where it does not conflict with surface water management requirements, the maximum percent of lot coverage may be increased by up to five (5) percent of the total square footage over the maximum lot coverage permitted by the underlying zoning district.

B. **Parking Requirements.** For multifamily developments containing qualified housing, the percentage of compact parking stalls may be increased up to fifty (50) percent of the total required parking.

C. In circumstances where housing serving qualified populations is located within one quarter (1/4) mile of transit routes and can be shown to generate significantly lower-than-average parking demand, parking requirements may be further reduced at the Community Development Director's discretion. The applicant shall be responsible for preparing any additional studies or evaluation required to provide evidence of demand.

D. **Building Height.** The maximum building height may be increased by up to twelve (12) feet for those portions of the building(s) at least twenty (20) feet from any property line.

18A.50.760 Fee Reduction.

In order to further stimulate the provision of qualified units under this program, review fees for land-use applications and building permits for properties containing housing units dedicated to serving low-income persons shall be reduced by the percentage shown below at the time of application. Any available refunds for applications withdrawn in progress shall also be discounted correspondingly.

Density Bonus	Discount
1 – 5 percent	10%
6 – 10 percent	20%
11 – 15 percent	30%
16 – 20 percent	40%
21 – 25 percent	50%

18A.50.770 Review Process.

A pre-application conference will be required for any land-use application that includes a proposal for density bonus under this program. Density bonus proposals shall be reviewed and approved concurrently with the primary land-use application and shall follow the established procedures for review and appeal, if necessary, of the permit type.

18A.50.780 Monitoring.

The Community Development Department shall maintain a list of all qualified units created under this program. In conjunction with comprehensive plan review and amendment processes, the level and type of unit production and other factors relating to this program shall be evaluated to gauge how effectively these regulations are functioning and to direct necessary adjustments in the program.

18A.50.790 Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. **LOW INCOME.** An individual, family, or unrelated persons living together whose adjusted gross income is eighty (80) percent or less of the county median income, adjusted for household size.

- B. **QUALIFIED UNIT.** Residential housing for rental occupancy which, as long as the same is occupied by a low-income, as defined herein, household, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty (30) percent of the resident's or residents' income(s).

Appendix B

Findings of Fact

1. The amended Findings of Fact contained in Appendix B of *LIHI, et al., v. City of Lakewood*, CPSGMHB Case No. 00-3-0017, Order on Superior Court Remand [No. 01-2-000608-5] in *LIHI I*, CPSGMHB Case No. 00-3-0017, are incorporated herein by reference.
2. On July 10, 2000, the City of Lakewood enacted Ordinance No. 237, adopting its GMA Comprehensive Plan.
3. On August 10, 2001, the City of Lakewood enacted Ordinance No. 264, adopting its Land Use and Development Code (**LUDC**) – Lakewood Municipal Code (**LMC**) Title 18A.
4. The LUDC includes the City's Housing Incentives Program (**HIP**) - Section 18A.50.700 – 790 LMC. *See also:* Appendix A of this Order.
5. Lakewood's concern for its poorest neighborhoods is illustrated by the fact that Lakewood Plan devotes a separate section of its land use element to Isolated Areas, which specifically address the isolated neighborhoods of American Lake Gardens (**ALG**), Springbrook and Tillicum. There are specific land use policies that address the plight of the "poorest areas of the City." Lakewood Plan, Chapter 3, at 31-33, Ex. 140, and Lakewood PHB, at 2.
6. Part of Lakewood's strategy for addressing its concerns with these areas is indicated by Lakewood's Plan Future Land Use Map (**FLUM**), which designates a portion of ALG and Springbrook as Industrial. The City's zoning map implements these Plan designations by zoning the designated areas as Industrial Business Park and Industrial I. Lakewood Plan, FLUM, Chapter 2, at 3 and Zoning Map, attachment A to Lakewood PHB.
7. The City's five-part strategy acknowledges and addresses the issues in these low-income neighborhoods. Lakewood PHB, at 1-2 and HOM Transcript, at 52-53 and 58-61.
8. The 1990 Census tract data indicates that 76% of the people living in Springbrook and 79% of the people living in ALG and Tillicum have incomes below 80% of the 1990 Area Median Income (**AMI**) (*i.e.* \$28,100). Consolidated Plan for Housing and Community

Development 2000-2005, May 2000, Section V, at 26-27, Ex. 143, Ex. 85. ^[12]

9. LIHI demonstrates that over three quarters of the poor people who need affordable housing living in Lakewood earn less than 50% of the AMI and another 20% earn 80% or less. LIHI PHB, at 27, citing Ex. 143. Lakewood does not dispute these figures. Lakewood PHB, at 1-49.

10. The City's adoption of the Housing Incentive Program is part of its strategy for implementing its Plan and otherwise complying with the goals and requirements of the Act. "The City is responsible for establishing regulations that will result in housing opportunities for all of its residents, no matter what their economic means, age or level of ability." HIP Purpose statement, 18A.50.710 LMC.

^[1]

See: LIHI v. City of Lakewood (LIHI I), CPSGMHB Case No. 00-3-0017, Final Decision and Order, (Mar. 9, 2000).

^[2]

See: Appendix A for the complete text of the HIP program – Lakewood Municipal Code 18A.50.700-790.

^[3]

See: LMC 18A.02.465(B), (C) and (D), and Lakewood PHB, at 18.

^[4]

Lakewood's five-part strategy includes: 1) the limited redesignation to industrial of part of the Springbrook and American Lake Gardens neighborhoods; 2) the economic development element's policies geared towards attracting high wage businesses to these areas; 3) adding basic infrastructure to these neighborhoods; 4) urban design efforts to improve these communities; and 5) implementing numerous policy measures to encourage development of affordable housing. Lakewood PHB, at 1-2.

^[5]

The Board notes that at the HOM, LIHI specifically addressed Plan Policy LU-7.23. LIHI HOM handout and HOM Transcript, at 18-19.

^[6]

The Housing Incentive Program is set forth at City Code § 18.50.700 - .900, pages 245-248. *See also: Appendix A of this Order.*

^[7]

While the Board found the City's FLUM designations to be in compliance with the GMA in *LIHI I*, it did recognize that the industrial designation of such a large portion of these two neighborhoods would be "strong medicine." The Board stated:

On balance, the Board concludes that the City has been forced to make some very difficult choices from the range of options that the GMA allows it to make. The conversion of up to a third of American Lake Gardens and Springbrook to industrial uses is *strong, albeit necessary, medicine*. Had it been in larger dosage, the Board would seriously have questioned whether these areas could remain viable as residential neighborhoods. The Board notes that much of LIHI's concern is focused on the City's willingness to follow through on the commitments ostensibly made by Lakewood's many

policies. While LIHI's anxiety is understandable, the Board does not question Lakewood's good faith commitment to follow through.

LIHI I, at 4, (emphasis supplied).

[8] WAC 365-195-310(g).

[9] *Id.*

[10] The Board recognizes that LIHI had previously challenged the Plan's designation of these areas as Industrial in *LIHI I*. Nonetheless, the Board upheld the designations. *See: LIHI I* FDO and Order on Remand. The Board also notes that, notwithstanding references to the FEIS and DNS in briefing, there are no SEPA issues presented to the Board in this case. However the Board does take notice that the City's DNS, which accompanied the adoption of the LUDC, indicates that the City determined the action [adoption of the LUDC] had no probable significant environmental impacts. The DNS states:

Environmental impacts resulting from the adoption of the proposed Land Use and Development Code are expected to be minimal. The fundamental land use impacts resulting from the adoption of the comprehensive plan are described in the Final EIS prepared for that document, which was adopted by the Lakewood City Council in July 2000. The comprehensive plan and FEIS are hereby incorporated into this document by reference.

Ex. 132, at 1. The Board notes that the FEIS discloses potential significant adverse impacts to the environment of the alternatives considered and discusses measures to mitigate such potential impacts. The cover letter for the DNS also provides:

The lead agency for this proposal has determined that all potential significant adverse impacts on the environment will be addressed through mitigation measures including further project specific environmental reviews.

Ex. 132, at 1.

[11] *See: Lakewood's list of implementing measures for affordable housing, noted under position of the parties, supra.*

[12] These percentages were computed from data for Census Tract 71802 (Springbrook), composed of 5 block groups; and Census Tract 7200 (Tillicum and ALG) composed of 7 block groups.